



NEW YORK CITY DEPARTMENT OF CORRECTION

Cynthia Brann, Commissioner

Heidi Grossman, Deputy Commissioner

Office of the General Counsel/Legal Division

75-20 Astoria Boulevard – Suite 305

East Elmhurst, NY 11370

718 • 546 • 0955

Fax 718 • 278 • 6001

January 16, 2019

Todd Feathers
Via MuckRock News
DEPT MR 10487
441A Highland Avenue
Somerville, MA 02144-2516

Re: FOIL Appeal (Investigations into Allegations of Sexual Abuse)

Dear Mr. Feathers:

I write in response to your appeal (copy enclosed) dated December 24, 2018 and received January 2, 2019, of your FOIL request dated February 12, 2014, in which you requested “administrative investigations” and “criminal investigations” since August 20, 2012 into allegations of sexual abuse in correctional facilities administered by the New York City Department of Correction (“Department” or “DOC”).

As a preliminary matter, the Department does not conduct criminal investigations. Accordingly, the Department does not possess or maintain records responsive to this portion of your request. With respect to your request for administrative investigations into allegations of sexual abuse in DOC correctional facilities, your request will likely be denied for one or more of the following exemptions under the New York Public Officers Law:

- §87(2)(a): records or portions thereof that are specifically exempted from disclosure by state or federal statute.

New York Civil Rights Law §50-a(1) exempts from disclosure records that are used in investigations which may result in charges of misconduct or rules violations. Investigations into allegations of sexual abuse are part of officers’ personnel records used to evaluate performance towards continued employment or promotion. Pursuant to New York Civil Rights Law §50-a(1), such records used to evaluate performance cannot be disclosed without express written consent of the officer except as may be mandated by lawful court order.

New York Civil Rights Law §50-b exempts from disclosure records that may disclose the identity of any victim of a sex offense. Pursuant to New York Civil Rights Law §50-b, no public officer or employee shall disclose any portion of any document which “tends to identify” such a victim. Investigations into allegations of sexual abuse, by their very nature, may “tend to identify” victims of sex offenses. Disclosure of even a portion of such investigative reports are prohibited by New York Civil Rights Law §50-b.

- 87(2)(b): records or portions thereof that if disclosed would constitute an unwarranted invasion of personal privacy.

The reports sought contain a great deal of sensitive personal information. Mere redaction of names and “other identifying facts” may not be sufficient to protect the personal privacy of the individuals identified in the reports.

- 87(2)(e): records or portions thereof that are compiled for law enforcement purposes and which, if disclosed, would (i) interfere with law enforcement investigations or judicial proceedings; (ii) deprive a person of a right to a fair trial or impartial adjudication; (iii) identify a confidential source or disclose confidential information relating to a criminal investigation; or (iv) reveal criminal investigative techniques or procedures.

While the Department of Correction does not conduct criminal investigations, certain allegations of sexual abuse are also criminally investigated by the New York City Department of Investigation or the appropriate District Attorney’s office. Accordingly, disclosure of the requested reports may interfere with law enforcement investigations or identify a confidential source or disclose confidential information that could interfere with current or future criminal investigations.

- 87(2)(f): records or portions thereof that if disclosed could endanger the life or safety of any person.

The reports sought set out details relating to the general safety and security of a correctional facility, as well as security measures taken surrounding certain events. Disclosure of same could endanger the overall safety and security of DOC facilities, as well as the safety and security of individual inmates, officers, and other staff.

- §87(2)(g)(iii): records or portions thereof that are inter-agency or intra-agency materials which are not final agency policy or determinations.

Over 900 of the more than 2000 reports potentially responsive to your request relate to incidents that are currently being investigated, and final agency determinations have not been made. Pursuant to the New York State Public Officers Law, Section 87(2)(g)(iii), such records may consist of intra-agency and possibly inter-agency material which is not a final agency determination and can be withheld. In addition, potentially responsive records are still being generated. The Department, under the New York State Freedom of Information Law, is not obligated to create new records in order to respond to your request.

At this time, the Department does not anticipate releasing any of the requested reports for the above-stated reasons. However, the Department is undertaking a careful review of this position and will provide a final response to your request no later than March 8, 2019.

Very truly yours,



Lisa Richardson
Deputy General Counsel
Records Appeal Officer

MuckRock News
DEPT MR 10487
411A Highland Ave
Somerville, MA 02144-2516
10487-13536399@requests.muckrock.com

FOIL APPEAL

2019JAN-2 PHM:46

Department of Correction
Lisa Richardson, Records Appeal Officer
75-20 Astoria Blvd
East Elmhurst, NY 11370

December 24, 2018

This is a follow up to a previous request:

To Whom it May Concern,

I submitted the below request (which was never assigned a tracking number) more than four years ago to the Department of Correction and have yet to receive the responsive records. I have not received any communication from the department, in fact, since July 17, 2014, when Records Access Officer Laura S. Mello sent a letter (attached) indicating that the department was in the process of locating the records.

Given the absurd delay and lack of response from the Department of Correction, despite dozens of requests for an update, I am appealing this request. I ask that the records be produced without delay and that no fees be charged because 1) I am a reporter and intend to use the requested records to publish articles in the public interest and 2) the Department of Correction has abdicated its responsibilities under the FOIL.

Sincerely,
Todd Feathers

Filed via MuckRock.com
E-mail (Preferred): 10487-13536399@requests.muckrock.com

For mailed responses, please address (see note):
MuckRock News
DEPT MR 10487
411A Highland Ave
Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

On Nov. 16, 2017:
Hi!

MuckRock News
DEPT MR 10487
411A Highland Ave
Somerville, MA 02144-2516
10487-13536399@requests.muckrock.com

I'm wondering what the status of this request is?

Thanks!

-Vanessa

On Sept. 18, 2015:
To Whom It May Concern:

I wanted to follow up on the following Freedom of Information request, copied below, and originally submitted on Feb. 12, 2014. Please let me know when I can expect to receive a response, or if further clarification is needed.

Thanks for your help, and let me know if further clarification is needed.

On Sept. 3, 2015:
To Whom It May Concern:

I wanted to follow up on the following Freedom of Information request, copied below, and originally submitted on Feb. 12, 2014. Please let me know when I can expect to receive a response, or if further clarification is needed.

Thanks for your help, and let me know if further clarification is needed.

On Aug. 19, 2015:
To Whom It May Concern:

I wanted to follow up on the following Freedom of Information request, copied below, and originally submitted on Feb. 12, 2014. Please let me know when I can expect to receive a response, or if further clarification is needed.

Thank you for your help.

On Aug. 4, 2015:
To Whom It May Concern:

I wanted to follow up on the following Freedom of Information request, copied below, and originally submitted on Feb. 12, 2014. Please let me know when I can expect to receive a response, or if further clarification is needed.

Thank you for your help.

MuckRock News
DEPT MR 10487
411A Highland Ave
Somerville, MA 02144-2516
10487-13536399@requests.muckrock.com

--
On Feb. 12, 2014:

To Whom It May Concern:

Pursuant to the New York State Freedom of Information Law (1977 N.Y. Laws ch. 933), I hereby request the following records:

All administrative investigations since Aug. 20, 2012 into allegations of sexual abuse in correctional facilities administered by your agency. Title 115.71 (f) of the federal Prison Rape Elimination Act (PREA) requires that all administrative investigations "shall be documented in written reports that include a description of the physical and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings."

-All criminal investigations since Aug. 20, 2012 of allegations of sexual abuse in correctional facilities administered by your agency. Title 115.71 (g) of the PREA requires that all criminal investigations "shall be documented in a written report that contains a thorough description of physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible."

Title 115.71 (i) of the PREA requires that correctional agencies maintain copies of administrative and criminal investigations for "as long as the alleged abuser is incarcerated or employed by the agency, plus five years."

I understand that the documents I am requesting contain sensitive, personal information, and I expect that you will redact names and other identifying facts.

As a member of the news media, I request that all fees be waived.

I also request that, if appropriate, fees be waived as I believe this request is in the public interest. The requested documents will be made available to the general public free of charge as part of the public information service at MuckRock.com, processed by a representative of the news media/press and is made in the process of news gathering and not for commercial usage.

In the event that fees cannot be waived, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 5 business days, as the statute requires.

Sincerely,

Todd Feathers

Filed via MuckRock.com

MuckRock News
DEPT MR 10487
411A Highland Ave
Somerville, MA 02144-2516
10487-13536399@requests.muckrock.com

E-mail (Preferred): 10487-13536399@requests.muckrock.com

For mailed responses, please address (see note):

MuckRock News
DEPT MR 10487
411A Highland Ave
Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.